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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re R.G., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. R.G., Defendant and Appellant.	A132160 (Alameda County Super. Ct. No. SJ07008161-09)

Minor R.G. challenges jurisdictional findings that he aided and abetted another in the commission of a robbery and assault, contending they are unsupported by substantial evidence. We hold the evidence was sufficient to support the juvenile court's findings, and affirm the judgment.

I. BACKGROUND

A juvenile wardship petition under Welfare and Institutions Code section 602 charged appellant with one count of robbery (Pen. Code, § 211; count one) and two counts of assault with a deadly weapon by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1); counts two & three, victims Phillip A. and Christopher A.).

A contested jurisdictional hearing commenced on May 26, 2011.

A. ***Jurisdictional Hearing***

On the evening of March 10, 2011, Phillip A., age 22, was at his home in Fremont with his 15-year-old brother, Christopher, and Phillip's friends, W.Q., age 20, and Ali, age 21. Phillip and his friends went out to his car, which was parked across the street, to get cigarettes. He noticed a white van drive by and park three or four houses away. He was not paying attention to the van and did not see anyone get out of it.[1]

A minute or two later, two men approached Phillip.[2] He had "seen them around a couple times," but did not know their names. One of the men, later identified as Christopher Jackson, was older than the other, and looked to be about in his 40's.[3] When Jackson and appellant approached, Jackson said to Phillip something like, "What you got for me?" At that time, appellant was standing right next to Jackson. Phillip remembered being punched in the face by one of the men before he could answer. He fell to the ground bleeding. He thought the first blow was struck by the older man but he testified, "I got hit so many times, I'm not sure." He thought he had been hit 10 to 20 times. He never hit back. As a result of the first blow to his face, he sustained a "big, deep cut" that was "bleeding really bad." At the time of the hearing, six weeks after the incident, Phillip still had a scar and redness under his eye.

When Phillip got up from the ground, he discovered that his wallet, which had been in his pocket, and his cell phone, which had been on his hip, were missing. He felt the wallet being removed from his pocket and remembered the phone being taken from his waist, but he could not identify who had taken them.

Christopher testified he was across the street from his house on March 10, 2011, standing with Phillip, W.Q., and Ali next to Phillip's car, when he saw a van drive by.

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[1] On cross-examination, he testified that four or five people got out of the van, but only two walked up to him.

[2] Witnesses Christopher, Ali, and W.Q. testified three men walked up to them.

[3] Identity is not in issue in this appeal. Jackson, age 38, lived about 20 houses away from Phillip's house. One of the other two men who walked up with Jackson was later identified as appellant, age 16.

Five men got out of the van and three of them walked "really fast" toward Christopher and his group. Jackson was the first man and appellant was following immediately behind him.

Christopher testified Jackson asked Phillip something like, "[D]o you have anything for me" or "Can you give me something?" Phillip responded, "I don't have anything. All I have is cigarettes." "[A] split second later," Jackson punched Phillip, hitting him on his right eye. Christopher tried to defend his brother by striking Jackson. Almost immediately, appellant and the other man with Jackson began hitting Christopher. He felt a punch to his head and face. He ducked down in a defensive position with his hands and forearms partially shielding his head, but appellant and the other man kept punching him. He was hit "more than 15 times," sustaining a big bump and welt on the side of his face. He believed he was hit with a rock. A rock from the neighbor's yard with blood on it was found in the driveway of the Arnold home after the assault. At the time of the hearing, Christopher still had a scar on his face. At some point during the assault, he could see his brother on the ground with Jackson kicking him.

W.Q. testified five people got out of the van, and three of them walked up to Phillip and surrounded him. The older man said, "Do you have something?" Phillip may have said, "No, I don't have anything for you," just before the man punched him with his right hand. Christopher immediately struck the man in the face and was attacked by the others. W.Q. saw both of the other men swinging at Christopher, and saw he was not fighting back. W.Q. retreated to the other side of the car and could not see Phillip on the ground. Although he did not see Jackson take anything from Phillip, W.Q. testified Phillip asked him if he could use his phone after the men were gone.

Ali testified he saw three men approach Phillip and circle him as he was leaning against his car. After the first man punched Phillip, Christopher tried to "save" his brother by hitting the man who threw the punch. While Phillip was on the ground "getting stomped out" by that man, his two companions ran after Christopher. They caught up with him in Phillip's driveway, and began swinging at him. Each assailant swung six or seven times. Ali saw one of the men holding a rock and swinging it at

Christopher. Ali went over to help Christopher and pushed one of the men off of him. He told Christopher to run into the house. The men came after Ali at that point, but he retreated to protect himself. He was able to see Phillip's wallet and cell phone being taken from him by the first man. After that, all three men ran back to the van and the incident was over.

Appellant presented no evidence.

B. ***Juvenile Court Findings***

The juvenile court found all three counts alleged against appellant to be true. The court explained its true findings as to counts one and two[4] as follows: "It's clear a robbery was committed: Taking of property from another by force and fear. It's clear that [Phillip] . . . was assaulted . . . by force likely to produce great bodily injury per his testimony, the testimony of other individuals, the evidence, including the photograph and Court's observation of the current scarring of [Phillip]. [¶] . . . [¶] The issue with regards to Count One and Two is whether or not the Minor['s] actions are sufficient to qualify as an aider and abettor and, therefore, making him a principal in the offense. The steps which the [robbery and assault were] committed . . . do involve the approach, surrounding of the victim by the three individuals, and at that point, it wasn't clear, it's . . . certainly not sufficient, to be an aiding and abetting situation. [¶] But at that point where the statement is made by . . . Mr. Jackson, "Do you got something for me," at that point . . . there's some information, there's some knowledge [by] all individuals present that there is . . . a desire to get something from the victim. Once he punches him, I am clear it's going to be taken by force or fear. . . . [¶] [A]t that point where Christopher . . . hits Jackson, [the robbery] has not yet been completed. It's still in the scope of being completed. The wallet was removed, the cell phone was later removed . . . . [¶] In between that time, the Minor had gone to the aid of Mr. Jackson, who was hit by [Christopher]. And clearly at that point, he was assisting Mr. Jackson in completing the crime of robbery . . . [and assault by] means of force likely to produc[e] Great Bodily

[4] Count three is not in issue in this appeal.

Injury, Mr. Jackson continued to hit [Christopher] completing the rest of the [Penal Code section] 245[, subdivision] (a)(1) [and] . . . it is clear that the elements of being an aiding and abetting, not only the actions but, also, the knowledge and intent are clear to the Court that those offenses were committed as an aider and abettor beyond a reasonable doubt."

C. *Disposition and Appeal*

The court ordered appellant committed to the Division of Juvenile Justice for a maximum term of eight years eight months. Appellant's premature notice of appeal was deemed by this court to be from the dispositional order.

II. DISCUSSION

Appellant contends there was insufficient evidence to support the juvenile court's findings that he aided and abetted Jackson's robbery and assault by force likely to produce great bodily injury.

In reviewing the sufficiency of the evidence to support a juvenile adjudication, the standard of review is the same as that applied in reviewing the sufficiency of the evidence to support a criminal conviction. (*In re Sylvester C.* (2006) 137 Cal.App.4th 601, 605.) In either case, "we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*Ibid.*, fn. omitted; accord *People v. Bolin* (1998) 18 Cal.4th 297, 331.) We do not reweigh evidence or resolve credibility issues, which are "the exclusive province of the trier of fact." (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) The testimony of a single witness is sufficient to support a conviction unless it narrates physically impossible or inherently improbable events. (*Ibid.*) We draw all reasonable inferences in favor of the fact finder's conclusions, whether based on direct or circumstantial evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) But a finding is not supported by substantial evidence if it is based solely on unreasonable inferences, speculation, or conjecture. (*In re H.B.* (2008) 161 Cal.App.4th 115, 120.)

A person aids and abets the commission of a crime when he or she commits, encourages or facilitates its commission with knowledge of the unlawful purpose of the perpetrator and the intent or purpose of committing, encouraging, or facilitating the offense. (*People v. Beeman* (1984) 35 Cal.3d 547, 560–561.) No particular factor is dispositive in establishing knowledge and intent; the court must look at the totality of the circumstances. (*People v. Medina* (2009) 46 Cal.4th 913, 922.) "Among the factors which may be considered . . . are: presence at the scene of the crime, companionship, and conduct before and after the offense." (*In re Lynette G.* (1976) 54 Cal.App.3d 1087, 1094.) Presence at the scene of a crime, standing alone, is insufficient to establish liability on an aider and abettor theory. (*People v. Durham* (1969) 70 Cal.2d 171, 181 (*Durham*).)

Appellant contends "the only evidence upon which the prosecution witnesses agreed was that [he] was present when Jackson approached Phillip, asked if he had something for Jackson and then hit [Phillip]." Citing *Durham*, he maintains this evidence of his "mere presence" is insufficient to establish aiding and abetting. In our view, appellant mischaracterizes the evidence and misapplies the law.

First, the four prosecution witnesses were remarkably consistent in their testimony about the key facts supporting the juvenile court's aiding and abetting finding. The slight discrepancies among the four accounts were immaterial and are readily explained by the different perspectives from which the witnesses observed what occurred. For example, Phillip remembered only Jackson and appellant approaching him from the van, whereas Christopher, Ali, and W.Q. all remembered there was a third man present. This is not surprising. Phillip was almost immediately knocked to the ground and set upon by Jackson. He testified he was hit so many times he could not even remember if Jackson hit him first. He was clearly in the worst position of the four witnesses to accurately perceive how many others participated in the attack. On the other hand, Phillip confirmed the testimony of the others that appellant and Jackson approached together. All of the witnesses testified the men got out of the same van that had passed Phillip and his friends and then stopped. All testified the men walked up purposefully together and

surrounded Phillip. Even one witness's testimony along these lines would be sufficient to establish circumstances significantly more probative of concerted activity than appellant's mere coincidental presence at the scene.

All of the witnesses heard Jackson ask Phillip whether he had something for him, and testified appellant was standing at least as close as they were to Jackson when he spoke. This is more than sufficient to support a finding that appellant also must have heard what Jackson said and then seen him knock Phillip to the ground. Although Phillip was in no position to observe what was happening to others after that point, the other witnesses all saw 15-year-old Christopher strike at Jackson and saw appellant and the other man immediately attack Christopher and continue to pummel him while Jackson was beating and then robbing Phillip. There was little difference in the accounts of the three witnesses in a position to observe these events. Unless materially contradicted by other equally credible evidence, any one of these accounts would be sufficient to establish all of the facts the court referenced in making its findings. Moreover, the court drew entirely reasonable inferences from the testimony.[5] Jackson's words to Phillip followed immediately by his reflexive violent act removed any doubt about whether appellant understood Jackson's intentions. He made no move to back away from Jackson or try to restrain him. There was no evidence of body language or verbalizations by appellant showing he was surprised or startled by Jackson's sudden aggression. To the contrary, he immediately joined in it, responding instantaneously to Christopher's ineffectual attempt to defend Phillip by attacking Christopher. That eliminated any theoretical doubt about why he had walked up to the group at Jackson's side. He was there to help Jackson meet any resistance he might face in completing his intended crimes.

Appellant states there is no evidence the men approached Phillip in a threatening manner. He cites Ali's testimony that Phillip told his friends as Jackson and the others

[5] We appreciate the carefulness with which the juvenile court explicated its findings and inferences on the record.

were approaching, "Oh, those are just my neighbors. It's nothing." Of course, this testimony suggests just the opposite of what appellant claims. It shows Phillip felt a need to reassure his friends the men approaching were neighbors and therefore posed no threat. Christopher testified he was very concerned as the men approached, and said something to the others about it. In any event, even if Phillip and his friends did not feel threatened as the men approached them, that would not be very probative as to what appellant knew or expected to happen.

Appellant points out there was no evidence anyone demanded Phillip's cell phone or wallet. Since Jackson and Phillip were neighbors, it would be sheer speculation, appellant argues, to conclude Jackson must have been intending to rob Phillip when he asked him if he had something for him. He could have been referring to money owed, something borrowed or unreturned, or a wager settled. Appellant suggests there was no evidence Jackson wanted the cell phone or wallet or, if he did, that appellant knew this. Here, appellant engages in pure speculation. He ignores Phillip's testimony on cross-examination denying he had any prior dealings with Jackson that might have led Jackson to believe he owed him a debt of any nature, and ignores the corroborating testimony of the three other prosecution witnesses that they knew of no such debt or prior dealings. The juvenile court engaged in no such speculation, but drew appropriate inferences from the totality of the evidence. It reasonably inferred from Jackson's words and conduct that Jackson intended to rob Phillip by force, and reasonably inferred from all of the proven circumstances—appellant's arrival with Jackson, his taking a position next to him, and his actions after hearing Jackson's words and seeing him attack Phillip—that appellant understood what Jackson was doing and was there to help him. No express vocal declaration by Jackson of his intention to assault and rob Phillip had to be shown in order to support the court's findings against appellant. (See *People v. Le Grant* (1946) 76 Cal.App.2d 148, 153 [need not be shown that the direct perpetrator communicated his purpose to the accused aider and abettor if the latter by acts, words, or deeds aided or encouraged commission of the crime].)

Finally, appellant contends the evidence shows appellant only became involved to keep Christopher from continuing his assault on Jackson, not to assist Jackson in his confrontation with Phillip. But appellant was not merely defending Jackson from an attack. He knew Jackson was the aggressor. Jackson had stopped his travels, gotten out of the van, and walked 100 yards in the opposite direction in order to confront Phillip. Jackson had thrown the first punch, and kept up his attack although Phillip had been knocked to the ground. Rather than simply try to screen Christopher off from Jackson or yell for him to leave Jackson alone, appellant and the third man kept swinging at Christopher even after he had retreated across the street, giving Jackson time to complete his assault and take Phillip's property. As soon as Jackson was done and Phillip's property was in his possession, all three men fled back to the van and escaped together, further demonstrating appellant was acting in concert with Jackson.

In our view, the evidence fully supports the juvenile court's findings.

III. DISPOSITION

The judgment is affirmed.

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Margulies, Acting P.J.

We concur:

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Dondero, J.

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Banke, J.